

OPEN MEETING ITEM



0000035183

ORIGINAL



COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

ARIZONA CORPORATION COMMISSION

22

DATE: November 16, 2005
DOCKET NO: RR-03639A-05-0404

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Marc E. Stern. The recommendation has been filed in the form of an Opinion and Order on:

UNION PACIFIC RAILROAD (UPGRADE CROSSING)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

NOVEMBER 25, 2005

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for Open Meeting to be held on:

DECEMBER 6 AND 7, 2005

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

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BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1 **THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MARC SPITZER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF
9 VALLEY METRO RAIL TO UPGRADE A
10 CROSSING OF THE UNION PACIFIC
11 RAILROAD AT FIRST STREET AND RIO
12 SALADO PARKWAY IN TEMPE, ARIZONA,
13 AAR/DOT NO. 741 547N.

DOCKET NO. RR-03639A-05-0404

DECISION NO. _____

OPINION AND ORDER

10 DATE OF HEARING: October 26, 2005

11 PLACE OF HEARING: Phoenix, Arizona

12 ADMINISTRATIVE LAW JUDGE: Marc E. Stern

13 APPEARANCES: Ms. Diane Targovnik, Staff Attorney, Legal Division,
14 on behalf of the Utilities Division of the Arizona
Corporation Commission.

15 **BY THE COMMISSION:**

16 On June 3, 2005, Valley Metro Rail ("VMR") filed with the Arizona Corporation
17 Commission ("Commission") a request for approval of an agreement with the Union Pacific Railroad
18 ("Railroad") to upgrade a crossing at First Street and Rio Salado Parkway in Tempe, Arizona at
19 AAR/DOT No. 741 547N ("Application").

20 On September 29, 2005, by Procedural Order, the Application was set for a hearing and VMR
21 was ordered to notify any interested party of the Application and the hearing.

22 On October 18, 2005, VMR filed certification that notice had been provided pursuant to the
23 terms of the Procedural Order.

24 On October 26, 2005, a full public hearing was held before a duly authorized Administrative
25 Law Judge of the Commission at its offices in Phoenix, Arizona. At the conclusion of the hearing,
26 the matter was taken under advisement pending submission of a Recommended Opinion and Order to
27 the Commission.

28 * * * * *

1 Having considered the entire record herein and being fully advised in the premises, the
2 Commission finds, concludes, and orders that:

3 **FINDINGS OF FACT**

4 1. On June 3, 2005, VMR filed an Application in which it requested an Opinion and
5 Order from the Commission approving an agreement between VMR and the Railroad to upgrade the
6 existing at-grade crossing of the Railroad at First Street and Rio Salado Parkway where VMR's new
7 tracks will parallel the Railroad's existing tracks and VMR's and the Railroad's automatic warning
8 devices will interface.

9 2. The Railroad's existing cantilevered flashing lights and automatic gates will be moved
10 and relocated to allow for the installation of VMR's new tracks and automatic warning devices which
11 will be interconnected with the Railroad's so that their warning devices will operate simultaneously
12 with either the passing of a freight train or a light rail vehicle where both VMR's and the Railroad's
13 tracks cross First Street in Tempe, Arizona at AAR/DOT No. 741 547N.

14 3. This construction will facilitate the addition of VMR's tracks and automatic warning
15 devices at the grade-separated crossing of the Railroad, and will provide for any necessary relocation
16 of Railroad equipment.

17 4. On October 18, 2005, VMR filed certification that it had provided notice by registered
18 U.S. mail of the Application and hearing thereon.

19 5. A hearing was held as scheduled on October 26, 2005.

20 6. The Application provides for the VMR's and the Railroad's tracks and automatic
21 warning devices to interface and operate simultaneously at the crossing.

22 7. Staff testified that the cost apportionment for the construction of the crossing upgrade
23 as provided in the Application was proper.

24 8. Staff has recommended that the Application be approved.

25 **CONCLUSIONS OF LAW**

26 1. The Commission has jurisdiction over the parties and over the subject matter of the
27 Application pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-336, 40-337 and
28 40-337.01.

1 2. Notice of the Application was provided in accordance with the law.

2 3. Installation of the crossing upgrade is necessary for the public's convenience and
3 safety.

4 4. Pursuant to A.R.S. §§ 40-336 and 40-337, the Application should be approved as
5 recommended by Staff.

6 5. After the construction at the crossing, the Railroad should maintain its portion of the
7 crossing in accordance with A.A.C. R14-5-104.

8 **ORDER**

9 IT IS THEREFORE ORDERED that the Valley Metro Rail's Application is hereby approved.

10 IT IS FURTHER ORDERED that the Union Pacific Railroad Company shall complete the
11 crossing upgrade as described in the Application within fifteen months from the effective date of this
12 Decision.

13 IT IS FURTHER ORDERED that the Union Pacific Railroad Company shall notify the
14 Commission, in writing, within ten days of both the commencement and the completion of the
15 crossing upgrade, pursuant to A.A.C. R14-5-104.

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1 IT IS FURTHER ORDERED that upon completion of the crossing upgrade, the Union Pacific
2 Railroad Company shall maintain its portion of the crossing in compliance with the A.A.C. R14-5-
3 104.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
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8 _____
CHAIRMAN

COMMISSIONER

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12 COMMISSIONER

COMMISSIONER

COMMISSIONER

13 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
14 Director of the Arizona Corporation Commission, have
15 hereunto set my hand and caused the official seal of the
16 Commission to be affixed at the Capitol, in the City of Phoenix,
17 this ____ day of _____, 2005.

18 _____
BRIAN C. McNEIL
EXECUTIVE DIRECTOR

19 DISSENT _____
20

21 DISSENT _____
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23 MES:mlj
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1 SERVICE LIST FOR:

UNION PACIFIC RAILROAD COMPANY

2 DOCKET NO.

RR-03639A-05-0404

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